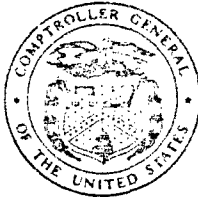


DECISION

1845464
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-200615

DATE: June 15, 1981

MATTER OF: Larry E. Sevier - Real Estate Expenses - VA
Loan Origination fee

DIGEST: Transferred employee may not be reimbursed for expense he characterizes as "VA loan origination fee" incurred incident to purchase of home in vicinity of new duty station. Fee has been held by this Office to be finance charge and, thus, nonreimbursable expense under Federal Travel Regulations (FPMR 101-7) paragraph 2-6.2d (May 1973). That the Internal Revenue Service may not permit fee to be deducted as interest is not relevant. 5 U.S.C. §§ 5724 and 5724a govern employee's entitlement to reimbursement for relocation expenses, not laws and regulations governing taxation.

This action is in response to a claim from Larry E. Sevier, an employee of the Rural Electric Administration, United States Department of Agriculture, for reimbursement of a loan origination fee incurred incident to his transfer from Shawnee, Oklahoma, to Washington, D.C.

Mr. Sevier was denied reimbursement for a loan origination fee on a Veterans Administration guaranteed loan. Mr. Sevier states that he is aware that reimbursement for this fee is normally not allowed on the basis that it constitutes a finance charge. However, he has asked this Office to reconsider its prior decisions in light of the position taken by the Internal Revenue Service that a loan origination fee, sometimes referred to as points, "charged for services for getting a Veterans Administration loan are not interest." Internal Revenue Service Publication 545 (Rev. No. 80).

Mr. Sevier has not provided a copy of the settlement sheet or an itemization of the costs that make up the charge that he refers to as a "VA loan origination fee." Therefore, we must rely on his characterization of the expense.

Reimbursement of expenses incident to the transfer of an employee from one permanent duty station to another are

[Request for Reimbursement of Loan Origination Fee]

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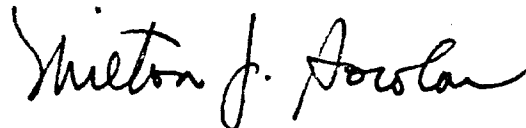
authorized by 5 U.S.C. §§ 5724 and 5724a (1976). Implementing regulations are contained in the Federal Travel Regulations (FPMR 101-7), issued by the General Services Administration. Paragraph 2-6.2d (May 1973) of those regulations prohibits the reimbursement of any fee, cost, charge, or expense which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Pub. L. No. 90-321, 15 U.S.C. §§ 1601, et seq. (1976) and Regulation Z, codified at 12 C.F.R. § 226.4 (1980). Decisions of this Office have consistently held that where the Truth in Lending Act and the implementing regulations define an item as a finance charge, reimbursement may not be allowed for that item. Richard J. Elliott, B-194072, July 2, 1979. As Mr. Sevier notes in his letter to us, this Office has previously ruled the VA loan origination fees constitute a finance charge under Regulation Z. See B-178235, May 7, 1973.

That decision, as are our other decisions concerning loan origination fees, is based on the above-discussed provisions of the General Service Administration's Federal Travel Regulations and Regulation Z, which is issued by the Federal Reserve System. This Office has no authority to waive or modify the application of those regulations. See Algis G. Taruski, B-198296, September 23, 1980.

Likewise, we note that Mr. Sevier's entitlement to reimbursement for relocation expenses is governed by the laws and regulations discussed above, and not by the laws and regulations governing taxation. Therefore, it is not relevant whether the fees in question are deductible as interest charges for income tax purposes. Michael R. Waldwyn B-187890, February 17, 1977.

As mentioned above, Mr. Sevier has not provided an itemization of the charges which make up the VA loan origination fee. Our position that loan origination fees are finance charges is based on the rationale that a fee which is stated as a fixed percentage of the amount loaned without reference to the type or extent of services actually performed by the lender is more in the nature of a charge for the hire of money than it is for the costs of customary services performed in the course of settlement and processing a loan. See Claude C. Persinger B-183972, April 16, 1976. Thus, where it is claimed that a

loan origination fee is levied to reimburse the lender for costs of specific services performed, we require an itemization of those charges in order to insure that reimbursement is authorized only for those charges which are not a part of finance charges. James J. Beirs, B-184703, April 30, 1976. Therefore, if Mr. Sevier is of the opinion that the fee contains reimbursable items, he may submit to his agency an itemization showing the specific charges that are included in the fee for reimbursement of otherwise proper expenses.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States